

REMARKS

Claims 48-50 are pending in this application. In this Preliminary Amendment, claims 48-50 have been canceled, and new claims 53-71 are added. After cancellation and addition of claims herein, claims 53-71 will be pending in this application. Reconsideration of this application in view of the amendments above and the following remarks is respectfully requested.

In the final Office Action dated June 25, 2003, the Examiner rejected claims 15-20 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,017,320 (Bleeker et al.) in view of U.S. Patent No. 5,336,159 (Cheng). According to the Examiner, Bleeker teaches a massaging apparatus comprising rollers and a suction chamber within a housing but lacks a heat source, and Cheng teaches a radiant heat source for applying heat to the tissue. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to provide Bleeker's apparatus with a radiant heat source as taught by Cheng so as to enhance the massaging effect.

Applicants appealed this final Office Action, and on February 17, 2004 Applicants submitted an Appeal Brief (filed February 23, 2004), in response to which the Examiner provided an Examiner's Answer dated September 16, 2004. This Preliminary Amendment is being filed concurrently with a Request for Withdrawal of Appeal and a Request for Continued Examination. In response to the rejections above, Applicant has now canceled claims 48-50 and has added new claims 53-71. As discussed below, Applicants believe that new claims 53-71 are patentable over the prior art.

Bleeker describes a massaging apparatus that uses a suction chamber between two rollers for generating a partial vacuum over a relatively small contact area of the skin to form folds in the skin for massaging the skin within the suction chamber. Cheng describes a massaging apparatus that uses an infrared radiant device to produce heat for stimulating the muscles and joints as they are massaged by vibrating elements. Both Bleeker's and Cheng's disclosures are directed to massaging apparatuses that are intended for enhanced massaging of the skin. The difference between Bleeker and Cheng is that Bleeker adds vacuum to massaging elements in order to enhance massaging by sucking folds of skin between two rollers, and Cheng adds

infrared heat to massaging elements in order to enhance massaging by stimulating joints and muscles as they are being kneaded by vibrating elements.

According to the Examiner, it would have been obvious to one of ordinary skill in the art to provide Bleeker's apparatus with a radiant heat source as taught by Cheng so as to enhance the massaging effect. While it may or may not be true that it would have been obvious to combine Bleeker and Cheng so as to enhance the massaging effect, the Examiner's conclusion is irrelevant to the claims herein, as even a combination of Bleeker and Cheng would not serve to render the claims herein obvious. Applicants' invention as set forth in the new claims is not directed to a massaging effect, as are both Bleeker and Cheng. Instead, Applicants' invention is directed to a method for reducing effects on a person's skin resulting from cellulite tissue deposits underlying the skin region. Neither Bleeker nor Cheng makes any reference to, is directed in any way toward or in any way accomplishes the use of skin manipulation/massage or heat or suction/vacuum to reduce the effects on the appearance of skin due to cellulite deposits under the skin. In fact, neither Bleeker nor Cheng even mentions the word "cellulite" in the text of its patent, and neither Bleeker nor Cheng considers the effects of skin manipulation/massage with heat and suction/vacuum beyond merely enhanced massaging effects.

By contrast, new claims 53-71 are specifically directed to a method for reducing effects on appearance of a region of a person's skin resulting from cellulite tissue deposits underlying the skin region. This method includes providing an apparatus for treating cellulite tissue underlying a skin region, the apparatus having a housing, a vacuum element to draw the region of skin and the underlying cellulite tissue towards the housing, at least one tissue manipulating element positioned within the housing to stress and mobilize the skin region and the underlying cellulite tissue when the apparatus is used to massage the skin region, and a radiant heat source to heat the cellulite tissue under the skin region. Neither Bleeker nor Cheng provides such an apparatus for treating cellulite tissue underlying a skin region within a method for reducing effects on appearance of a region of a person's skin resulting from cellulite tissue deposits underlying the skin region.

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While the Examiner contends that Bleeker and Cheng individually provide different portions of such an apparatus, the two apparatuses of Bleeker and Cheng are intended for massaging the skin, not for treating cellulite tissue underlying it. In fact, the infrared device within the massaging device of Cheng is described in Cheng as "stimulating the muscles and joints as they are massaged by the rubber massage elements thereof" (see column 1, lines 23-25; see also column 1, lines 6-8, and column 2, lines 25-33). There is no indication or suggestion in Cheng that the infrared device is intended to heat, or capable of heating, the cellulite tissue under the skin region. Accordingly, even when combined, Bleeker and Cheng do not suggest the step of providing an apparatus for treating cellulite tissue underlying a skin region.

The method in new claims 53-71 also includes the steps of drawing the region of skin and the underlying cellulite tissue towards the housing with the vacuum element, applying radiant heat to the skin region such that the radiant heat substantially passes through the skin and heats the underlying cellulite tissue, and homogenizing the cellulite tissue underlying the skin region by stressing and mobilizing the skin region and the underlying cellulite tissue by using the tissue manipulating element to massage the skin region,. While the Examiner may contend that operation of the apparatuses of Bleeker and Cheng may individually perform certain of the steps of such a method, the Bleeker and Cheng apparatuses only massage the skin and do not treat cellulite tissue underlying the skin tissue.

While the individual apparatuses disclosed in Bleeker and Cheng may draw the skin towards the housing with a vacuum element, heat the skin region or stress and mobilize the skin, the apparatuses of both Bleeker and Cheng perform these steps only in order to massage the skin. Neither the Bleeker apparatus nor the Cheng apparatus homogenizes the cellulite tissue underlying the skin region by stressing and mobilizing the skin region. In fact, the application of heat in Cheng is for stimulating the muscles and joints during the massage. Neither Bleeker nor Cheng discloses or even suggests that the apparatus discussed therein may be used to homogenize the cellulite tissue underlying the skin. This step is accomplished in claims 53-71 by stressing and mobilizing the skin region and the underlying cellulite tissue by using said at least one tissue manipulating element to massage the skin region.

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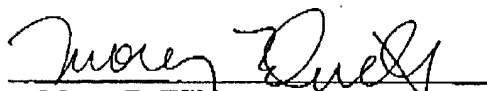
As set forth more particularly in claims 68-71, this step of homogenizing the cellulite tissue underlying the skin region comprises stressing and mobilizing the skin region and the underlying cellulite tissue that have been drawn towards said housing using said vacuum element (claim 68), stressing and mobilizing the skin region and the underlying cellulite tissue that have been heated by said radiant heat source (claim 69), stressing and mobilizing the skin region and the underlying cellulite tissue while the skin region and the underlying cellulite tissue are being drawn towards said housing using said vacuum element and while the skin region and the underlying cellulite tissue are being heated by said radiant heat source (claim 70), and stressing and mobilizing the skin region and the underlying cellulite tissue such that the cellulite tissue underlying the skin region is moved and spread evenly (claim 71). There is no disclosure of any of these steps in the cited prior art, and thus the claimed methods cannot be considered obvious in view of the cited references.

In light of the above arguments, Applicants respectfully submit that new claims 53-71 are patentable over the prior art.

Conclusion

Reconsideration of the present application, as amended, is requested. If, upon review, the Examiner is unable to issue an immediate Notice of Allowance, the Examiner is respectfully requested to telephone Applicant's undersigned attorney in order to resolve any outstanding issues and advance the prosecution of the case. An early and favorable action on the merits is earnestly solicited.

Respectfully Submitted,
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